



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable James C. Gilliland
County Attorney
Deaf Smith County
Hereford, Texas

Dear Sir:

Opinion No. 0-988
Re: When does the right to commission under Article 335, R.C.S., 1925, attach in delinquent tax suits on personal property, and whether the commissioners' court is authorized to contract for a percentage of taxes collected in delinquent tax suits on real property other than by suit?

Referring to your letter of June 15, 1939, the receipt of which has been acknowledged by this department, wherein you request our opinion, we note that you refer to our opinion No. 0-260, which applies only to delinquent tax collections upon personal property and the allowance of commissions under Article 335, Revised Civil Statutes, 1925. The syllabus of Opinion 0-260 reads:

"The county or district attorney is allowed the ten per cent commission as provided for in Article 335, Revised Civil Statutes, 1925, on money collected through the filing of delinquent tax suits against personal property. Such commission, however, is not to be included with the amount of taxes, penalty and interest in determining the amount sued for."

For your information, we herewith enclose a copy of the above mentioned opinion.

With further reference to your letter, the following questions are taken therefrom in answer to which you request our opinion:

"Does this right to commission attach only if suit is filed, or does it attach when he is instructed by the commissioners' court to collect the specified taxes, and so notifies the tax defendant?"

Hon. James C. Gilliland, Page 2

"May the commissioners' court contract, for a percentage of the taxes collected, with the county attorney to collect delinquent taxes on real property where it is done otherwise than by suit?"

As to your first question, in all cases involving suits for delinquent taxes on real estate or personal property, the filing of suit is a necessary pre-requisite to entitle the county attorney to the fees as provided for in Article 7332, as amended, Revised Civil Statutes, 1925, covering real estate, and such commissions allowed on personal property under Article 335 in said statute. The tax collector is primarily charged with the collection of all taxes, both current and delinquent, and he does all necessary work in the preparing of the lists, sending out notices and other preliminary work preparatory to the filing of suit by a county attorney for which services the law provides certain fees to be allowed the tax collector. Statutes prescribing fees for public officers are strictly construed and a right to fees may not rest upon implication. . . 34 Tex. Jur. § 105, p. 508.

You will note that Article 7332, as amended, reads in part as follows:

"The county or district attorney shall represent the State and county in all suits against delinquent taxpayers, and all sums collected shall be paid over immediately to the county collector. . . Provided, that the fees herein provided for in connection with delinquent tax suits shall constitute the only fees that shall be charged by said officers for preparing, filing, instituting, and prosecuting suits on delinquent taxes and securing collection thereof, and all laws in conflict herewith are hereby repealed. . ."

You are respectfully referred to the above article which provides the only fees payable to the county attorney in connection with delinquent tax suits, and it being the duty of the county attorney to represent the State and county in all such suits, there is no authority for the commissioners' court to enter into contract or allow additional compensation other than that provided for by statute.

Having discussed both of your questions as presented, it is, therefore, the opinion of this Department and in answer to your first question, the right to commissions under the provisions of Article 335, Revised Civil Statutes, 1925, in delinquent tax suits

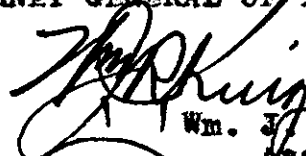
Hon. James C. Gilliland, Page 3

covering personal property, only attaches upon the filing of suits; and in answer to your second question, Article 7332, as amended, Acts of 1931, 42nd Legislature, provides the only fees chargeable by the county attorney for preparing, filing, instituting and prosecuting delinquent tax suits on real estate and securing a collection thereof. The commissioners' court is not authorized to contract with or pay to a county attorney a percentage of such taxes collected.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

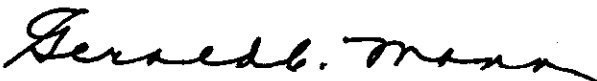


Wm. J. R. King
Assistant

WJRK:N

APPROVED JUN 29, 1939




ATTORNEY GENERAL OF TEXAS